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4 UNITED STATES DISTRICT COURT  
5 WESTERN DISTRICT OF WASHINGTON  
6 AT SEATTLE

7 RICHARD LEE JOHNSEN,

8 Plaintiff,

9 v.

10 HENRY TAMBE,

11 Defendant.

C19-141 TSZ

ORDER

12 THIS MATTER comes before the Court on the Report and Recommendation of  
13 the Honorable Michelle L. Peterson, United States Magistrate Judge, docket no. 58. In an  
14 earlier Report and Recommendation (“R&R No. 1”), docket no. 40, Magistrate Judge  
15 Peterson recommended that defendant Henry Tambe’s motion for summary judgment,  
16 docket no. 33, be granted. The Court vacated the R&R No. 1 in light of concerns that  
17 plaintiff Richard Lee Johnsen was never served with defendant’s motion, the notice  
18 required under Rand v. Rowland, 154 F.3d 952 (9th Cir. 1998), or R&R No. 1. See  
19 Minute Order (docket no. 42). The matter was referred back to Magistrate Judge  
20 Peterson, who subsequently issued an order directing plaintiff to show cause why this  
21 matter should not be dismissed for failure to prosecute. Order (docket no. 56). The  
22 Order to Show Cause was mailed to plaintiff at the Washington Corrections Center in  
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1 Shelton, Washington, but it was returned as undeliverable because the individual  
2 incarcerated at that facility, Richard L. Johnson (with an “o”), is not plaintiff Richard Lee  
3 Johnsen (with an “e”). See docket no. 57.

4         Meanwhile, the Court received a letter from Dennis R. Scott, a lawyer who  
5 represented plaintiff in two criminal matters pending in Skagit County Superior Court,  
6 namely Case Nos. 17-1-00784-5 and 17-1-01183-29. In his letter dated November 5,  
7 2019, Mr. Scott indicated that plaintiff was awaiting sentencing on November 22, 2019,  
8 and was facing a possible term of 48 months. Letter (docket no. 53). Both cases were,  
9 however, dismissed, and plaintiff does not appear to currently be in custody. In his letter,  
10 Mr. Scott stated that he had provided plaintiff with the service copy of the Court’s Minute  
11 Order vacating R&R No. 1, which had been mailed to Mr. Scott. Id. Mr. Scott also  
12 informed the Court that plaintiff does not have a fixed mailing address. Id. Mr. Scott’s  
13 correspondence is much appreciated by the Court. The Court is satisfied that plaintiff  
14 was made aware of the status of these proceedings in late October or early November  
15 2019, and that further efforts to locate plaintiff would be futile.

## 16 **Conclusion**

17         For the foregoing reasons, the Court ORDERS:

18         (1)     The pending Report and Recommendation, docket no. 58, is ADOPTED;

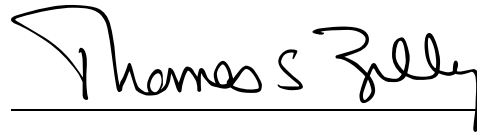
19         (2)     This matter is DISMISSED **without** prejudice for failure to prosecute; see  
20 Fed. R. Civ. P. 41(b);

21         (3)     Defendant’s motion for summary judgment, docket no. 33, is STRICKEN  
22 as moot; and  
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1           (4)     The Clerk is DIRECTED to send a copy of this Order to all counsel of  
2 record, to Magistrate Judge Peterson, and to Dennis R. Scott at P.O. Box 1502, as well as  
3 at 1004 7th Street, Suite 208, both in Anacortes, WA 98221, and to CLOSE this case.

4           IT IS SO ORDERED.

5           Dated this 31st day of January, 2019.

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8           Thomas S. Zilly  
9           United States District Judge  
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